

Bureau of Indian Affairs, Interior

§ 162.546

cost arising from the Indian landowners' negligence or willful misconduct.

(e) We may treat any provision of a lease document that violates Federal law as a violation of the lease.

§ 162.543 May permanent improvements be made under a WSR lease?

(a) A WSR lease must provide for the installation of a facility and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity, in accordance with § 162.019. These facilities and associated infrastructure are considered permanent improvements. A resource development plan must be submitted for approval with the lease under § 162.563(h).

(b) If the parties agree to any of the following changes to the resource development plan after lease approval, they must submit the revised plan to BIA for the file:

- (1) Location of permanent improvements;
- (2) Type of permanent improvements; or
- (3) Delay of 90 days or more in any phase of development.

§ 162.544 How must a WSR lease address ownership of permanent improvements?

(a) A WSR lease must specify who will own any permanent improvements the lessee installs during the lease term and may specify under what conditions, if any, permanent improvements the lessee constructs may be conveyed to the Indian landowners during the lease term. In addition, the lease must indicate whether each specific permanent improvement the lessee installs will:

- (1) Remain on the leased premises upon the expiration, termination, or cancellation of the lease, in a condition satisfactory to the Indian landowners and become the property of the Indian landowners;
- (2) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as closely as possible to their condition before installation of the permanent improvements; or
- (3) Be disposed of by other specified means.

(b) A lease that requires the lessee to remove the permanent improvements must also provide the Indian landowners with an option to take possession of and title to the permanent improvements if the improvements are not removed within the specified time period.

§ 162.545 How will BIA enforce removal requirements in a WSR lease?

(a) We may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense:

- (1) In consultation with the tribe, for tribal land or, where feasible, with Indian landowners for individually owned Indian land; and
- (2) Before or after expiration, termination, or cancellation of the lease.

(b) We may collect and hold the performance bond until removal and restoration are completed.

§ 162.546 What requirements for due diligence must a WSR lease include?

(a) A WSR lease must include due diligence requirements that require the lessee to:

- (1) Commence installation of energy facilities within 2 years after the effective date of the lease or consistent with a timeframe in the resource development plan;
- (2) If installation does not occur, or is not expected to be completed, within the time period specified in paragraph (a)(1) of this section, provide the Indian landowners and BIA with an explanation of good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation;
- (3) Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the resource development plan; and
- (4) Repair, place into service, or remove from the site within a time period specified in the lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period